

Legal & Regulatory Framework for National Identity Management in developing country

Appraisal of the National Identity Management Commission Act, 2007

**Wole Obayomi,
Partner, Tax & Regulatory Services
KPMG Nigeria**

1. Registration of citizens & non-citizens into the National Identity Database – Section 5(b)(c) & (o)

- **NIMC's responsibility for registration of births & deaths**
- **Get NIMC out of this & leave to the existing responsible agency, which should be institutionally strengthened to deliver results**
- **This & other agencies with which NIMC will have interface and inter-linkages should be simultaneously automated and integrated for inter-operability with NIMC**

2. Duration of validity of the General Multi-purpose Identity Card

- Section 25(2)(b) of the Act - allusion to “expiration” as one of the grounds for cancelling a card.
- No clear-cut reference in the Act to the length of validity of the card.
- **Caution!** NIMC must not fall into the “FRSC trap” with 3 years’ life for a driver’s licence
- UK’s example - driver’s licence does not fall due until you are 70 years old - a checkpoint to be sure that your senses are not impaired due to old age and that you are otherwise fit to drive.
- Multi-purpose identity card should remain valid until there is a material alteration to the personal details and circumstances of the card holder.

3. Mandatory registration for a fee [Section 31(d)]

- Why charge a fee for issuance of a Multipurpose Identity Card if registration is mandatory?
- Based on flawed rationale per the Policy - Nigerians already pay for some identification documents.
- Nigerians pay voluntarily on 'need' basis
 - Driver's licence - for those with cars & access to car
 - Passport - for international travelers
- *Contra* National Identity Card - mandatory & free to be all-inclusive
- Same treatment recommended for Multi-purpose Identity Card

4. Failure to register [Section 30(a)]

- Criminal penalty for failure to register under the Act.
 - Penalty is \geq N100K fine or 6 months imprisonment
- Practical problems
 - Why should those who genuinely want to register, but cannot afford the cost of the card be punished?
 - Poverty is not a crime!
 - Not a defence to a crime either!
- The Multi-purpose identity card should be free to avoid any absurdity.

5. What should NIMC charge fees for?

- NIMC should charge fees for:
 - *re-issuance/replacement of card*. Anyone who loses the card should pay for it. This will make them treasure and safeguard the card.
 - *Other services* – such as retrieval/update of information by the card holder or third party at the card holder's request or with his consent.
- No contradiction between non-payment for initial card issuance & public-private partnership (PPP) concept underlying the NIM project

6. Mandatory use of national identification number for transactions

- **Section 27 - List of mandatory transactions**
 - opening of personal bank account,
 - purchase of insurance,
 - payment of taxes
 - all consumer credit transactions etc.
- **Inclusion of payment of taxes questionable when we should be advocating voluntary tax compliance**
- **Underlying NIM is risk management**
- **No risk of identity theft in tax payment; it should be expunged from the Act.**
- **Include Post Office box service - to combat postal fraud.**
- **Possibly include telephone service - to combat invasion of privacy etc., but balance with “speed to market” by telephone companies.**

7. Privacy, sanctity and security of personal identity

- Public interest of institutional efficiency, law and order *versus* personal interest of protecting personal freedom, privacy and other prerogatives.
- Potential minefield for litigation
- Section 37 of the 1999 Constitution - *“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed”*
- Too generic & have to be liberally interpreted to encapsulate right to privacy in identity management

8. Disclosure of registered information by NIMC– S. 26

- **Subject to affected individual's authority or consent**
- **In the absence of the individual's consent, NIMC can disclose information:**
 - > in the interest of national security;**
 - > for prevention and detection of crime; and**
 - > for any other purpose as may be specified by NIMC in a regulation**
- **Qualification of NIMC's power - disclosure must be STRICTLY NECESSARY in the PUBLIC INTEREST.**

8. Disclosure of registered information – S. 26 (cont'd)

- **Issues & Recommendations:**
 - **The Act falls short of criminalizing unlawful disclosure by NIMC itself or its staff - big vacuum that future amendment of the legislation must address.**
 - **NIMC should judiciously exercise its power to issue a Regulation specifying the additional circumstances under which it may disclose registered information, to address any potential ambiguity that may arise in the event of litigation.**

Conclusion – critical success factors for effective NIM

- **NIMC must issue appropriate Regulations to provide the necessary regulatory framework for implementation of the programme.**
- **Automation of all Government agencies with linkages to NIMC to ensure the effective inter-operability of their integrated systems.**
- **NIMC must very good professionals, robust technology, processes and risk management framework to ensure the success of the national identity management initiative.**